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OFFICE OF PETITIONS

THE MAXHAM FIRM
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SUITE 350
SAN DIEGO, CA 92121

In re Application of
Stephan Blicher, et al.
Application No. 10/570,557
Filed: March 12, 2007
Attorney Docket No. 0740-78

DECISION ON PETITION

This is a decision on the petition, filed August 5, 2010, which is being treated as a petition under 37 CFR 1.181 (no fee) requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **DISMISSED**.

This application was held abandoned for failure to reply to the final Office action mailed August 13, 2009, which set a three (3) month shortened statutory period for reply. A Notice of Abandonment was mailed on May 7, 2010.

DISCUSSION OF PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT

Petitioner asserts that reply to the Office action dated August 13, 2009 was not filed as he was under the impression that a new Office action would be issued in response to the arguments set forth in the amendment filed May 28, 2009.

While it is noted that there are several dates to phone conversations held between the Examiner, the examiner's Supervisor and the petitioner, a review of the written record does not provide evidence to support petitioner's position that a new Office action would be issued.

Petitioner is directed to 37 CFR 1.135 which states:

§ 1.135 Abandonment for failure to reply within time period.

- (a) if applicant of a patent application fails to reply within a time period provided under § 1.134 and § 1.136, the application will become abandoned unless an Office action indicates otherwise.

Petitioner is further directed to 37 CFR 1.133(b) which reads in part:

An interview does not remove the necessity for reply to Office actions as specified in § 1.111 and §1.135.

As there is no reply in the file and the petitioner has not replied to the Office action, the petition to withdraw the holding of abandonment cannot be granted at the present time.

ALTERNATIVE VENUE

If petitioner cannot supply the evidence necessary to withdraw the holding of abandonment, or simply does not wish to, petitioner should consider filing a petition under 37 CFR 1.137(b) stating that the delay was unintentional. Public Law 97-247, § 3, 96 Stat. 317 (1982), which revised patent and trademark fees, amended 35 U.S.C. § 41(a)(7) to provide for the revival of an “unintentionally” abandoned application without a showing that the delay in prosecution or in late payment of the issue fee was “unavoidable.” This amendment to 35 U.S.C. § 41(a)(7) has been implemented in 37 CFR 1.137(b). An “unintentional” petition under 37 CFR 1.137(b) must be accompanied by the \$1620 petition fee.

The filing of a petition under 37 CFR 1.137(b) cannot be intentionally delayed and therefore must be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).

Any request for reconsideration of this decision should be filed within **TWO (2) MONTHS** from the mail date of this decision. *Note* 37 CFR 1.181(f). The request for reconsideration should include a cover letter and be entitled as a “Renewed Petition under 37 CFR 1.181 to Withdraw the Holding of Abandonment.”

Further correspondence with respect to this matter should be addressed as follows:

By Mail: Mail Stop PETITION
 Commissioner for Patents
 P. O. Box 1450
 Alexandria, VA 22313-1450

By hand: U. S. Patent and Trademark Office
 Customer Service Window, Mail Stop Petitions
 Randolph Building
 401 Dulany Street
 Alexandria, VA 22314

By facsimile: **(571) 273-8300**
Attn: Office of Petitions

Telephone inquiries concerning this decision should be directed to April M. Wise at (571) 272-1642.

/Carl Friedman/
Carl Friedman
Petitions Examiner
Office of Petitions

Enclosures: Petition For Revival Of An Application For Patent Abandoned Unintentionally
Under 37 CFR 1.137(b); Form PTO/SB/64, Privacy Act Statement.